

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
CITIBANK, N.A.,	:	08 Civ. 00569 (MGC)
Plaintiff,	:	
	:	
-against-	:	DECLARATION OF
	:	ROBERT B. BERNSTEIN IN
UNITED SUBCONTRACTORS INC.,	:	OPPOSITION TO
	:	PLAINTIFF'S MOTION FOR
Defendant.	:	<u>SUMMARY JUDGMENT</u>
	:	
-----X		

Robert B. Bernstein declares under penalty of perjury:

1. I am a partner at Vandenberg & Feliu, LLP, counsel for defendant United Subcontractors Inc.
2. In June 2008, counsel for one of USI's lenders forwarded me a series of emails dated December 13-14, 2007 between Cahill Gordon and some of USI's lenders. A copy of that email chain is attached as Exhibit A hereto.
3. A copy of a letter from Sheldon Solow, a lawyer at Kaye Scholer LLC, to Scott Flood at Citibank, dated December 20, 2007, is attached hereto as Exhibit B hereto.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 25, 2008



Robert B. Bernstein

Exhibit A

Robert Bernstein

From: Ahrens, Stephen [Stephen.Ahrens@blackrock.com]
Sent: Monday, June 23, 2008 4:24 PM
To: Robert Bernstein
Subject: FW: USI - Waiver
Attachments: USI Waiver Agreement_vDOC.DOC; rypy04_.DOC

-----Original Message-----

From: Heyman, Anthony
Sent: Monday, June 23, 2008 4:06 PM
To: Ahrens, Stephen
Subject: FW: USI - Waiver

Here is one...

From: Hamilton, Shana G. [mailto:SHamilton@cahill.com]
Sent: Friday, December 14, 2007 2:54 PM
To: skatzenstein@gsc.com; Heyman, Anthony; aschilling@cyptree.com; michael.sohr@alliancebernstein.com; terry.mccarthy@alliancebernstein.com; McKinney, Casey; epurcell@capitalsource.com; kathleen.brooks@ge.com; Martone, Salvatore Jr (GE, Corporate); Goldsmith, Scott; bhalendu.deshpande@himco.com; Frank, Richard J.
Cc: Ohler, Michael J.; Bradburd, Nathaniel
Subject: RE: USI - Waiver

Attached is a revised waiver, clean and marked. The only two changes in the attached are (1) addition of requirement that Borrower provide prior notice to the Lenders before making any payment to any third party in excess of \$1.0 million and (2) a revision to the fee language to incorporate a "consent by" date.

We plan on sending the waiver to the Company and its counsel this afternoon, please let us know prior to 4p (NY time) if you have any additional comments.

Upon sign off on the agreement by the Company, the waiver will be sent to the Agent for posting to the syndicate for review and signature.

Regards,
Shana

<<USI Waiver Agreement_vDOC.DOC>> <<rpy04_.DOC>>

Shana G. Hamilton
212.701.3086
shamilton@cahill.com

From: Hamilton, Shana G.
Sent: Friday, December 14, 2007 12:18 PM
To: Hamilton, Shana G.; 'skatzenstein@gsc.com'; 'anthony.heyman@blackrock.com'; 'aschilling@cyptree.com';

'michael.sohr@alliancebernstein.com'; 'terry.mccarthy@alliancebernstein.com'; 'McKinney, Casey'; 'epurcell@capitalsource.com'; 'kathleen.brooks@ge.com'; 'Martone, Salvatore Jr (GE, Corporate)'; 'Goldsmith, Scott'; 'bhalendu.deshpande@himco.com'; 'Frank, Richard J.'

Cc: Ohler, Michael J.
Subject: RE: USI - Waiver

Please let me know if there are multiple funds within your institutions from whom I should be expecting signature pages (and their names) so that I can confirm we have all necessary signatures. Also, some people have had difficulty opening the attachment so I have re-attached it here.

Regards,
Shana

<< File: USI Waiver Agreement_v3 (3).DOC >>

Shana G. Hamilton
212.701.3086
shamilton@cahill.com

From: Hamilton, Shana G.
Sent: Thursday, December 13, 2007 5:57 PM
To: 'skatzenstein@gsc.com'; 'anthony.heyman@blackrock.com'; 'aschilling@cyptree.com'; 'michael.sohr@alliancebernstein.com'; 'terry.mccarthy@alliancebernstein.com'; 'McKinney, Casey'; 'epurcell@capitalsource.com'; 'kathleen.brooks@ge.com'; 'Martone, Salvatore Jr (GE, Corporate)'; 'Goldsmith, Scott'; 'bhalendu.deshpande@himco.com'; 'Frank, Richard J.'

Cc: Ohler, Michael J.
Subject: USI - Waiver

Attached for your review is a draft of the USI Waiver and Amendment Agreement. The attached temporarily waives the 9/30 covenant default until 1/18. We would like to get this out to the Company tomorrow afternoon, please let us know if you have any comments as soon as possible. Also attached hereto is a signature page to the waiver, please arrange to have the attached executed and returned to me via pdf (shamilton@cahill.com) or fax (212 378 2515) by tomorrow afternoon, with two originals to follow at the address below. I will hold all signatures in escrow. Feel free to contact me with any other questions or concerns.

Regards,
Shana

<< File: USI Waiver Agreement_v3.DOC >> << File: Signature to USI Waiver.pdf >>

Shana Galeon Hamilton
Cahill Gordon & Reindel LLP
80 Pine Street New York, NY 10005
Tel 212 701 3086 Fax 212 378 2515
shamilton@cahill.com

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Exhibit B

KAYE SCHOLER LLC

Sheldon L. Solow
312 583-2320
ssolow@kayescholer.com
3 First National Plaza
Suite 4100
70 West Madison Street
Chicago, Illinois 60602-4231
312 583-2300
Fax 312 583-2520
www.kayescholer.com

December 20, 2007

VIA FACSIMILE AND OVERNIGHT COURIER

Scott L. Flood
Managing Director
CITIBANK N.A.
388 Greenwich Street - 17th Floor
New York, NY 10013

Re: ISDA Master Swap Agreement (the "Swap Agreement")
dated as of December 29, 2005, between Citibank, N.A.
(the "Citibank") and United Subcontractors Inc. ("USI")

Dear Mr. Flood:

Reference is made to the following: (a) the letter from you to USI dated as of December 12, 2007, in which you declare an Event of Default under the Swap Agreement (the "Default Letter"); (b) the letter from you to USI dated as of December 18, 2007, in which you designate December 18, 2007 as the Early Termination Date under the Swap Agreement (the "Termination Date Letter") and (c) the letter from you to USI dated as of December 18, 2007, in which you demand payment of \$2,751,333 to Citibank on account of the purported Event of Default (the "Demand Letter" and, with the Default Letter and the Termination Date Letter, the "Letters").

In the Default Letter, you advised USI that an Event of Default has occurred and is continuing under section 5(a)(vi)(1) and Part 5(d) of the Swap Agreement on account of a purported Event of Default under that certain First Lien and Credit and Guaranty Agreement dated as of December 27, 2005 (the "Credit Agreement"). Pursuant to section 5(a)(vi)(1) of the Swap Agreement, an Event of Default can be declared if a default or event of default has occurred with respect to a swap counterparty (Citibank in this case) on account of one or more agreements or instruments "which has resulted in the [indebtedness] becoming, or becoming capable at such time of being declared, due and payable . . . before it otherwise would have been declared due and payable".

In response to the Letters and as previously set forth in my letter to you dated as of December 18, 2007, the Event of Default referenced in the Letters was waived by the majority lenders under the Credit Agreement (the "Waiver"). The Waiver thereafter was memorialized in

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NEW YORK CHICAGO LOS ANGELES WASHINGTON, D.C. WEST PALM BEACH FRANKFURT LONDON SHANGHAI

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KAYE SCHOLER LLC

Scott L. Flood

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December 20, 2007

the Waiver and Amendment Agreement dated as of December 19, 2007. Notably, Citibank North America, Inc., the Administrative Agent under the Credit Agreement, did not declare a default or Event of Default under the Credit Agreement and did not demand payment of the indebtedness thereunder. Contrary to your statements in the Default Letter, given the Waiver, an Event of Default under the Credit Agreement that would result in the indebtedness under the Credit Agreement becoming, or becoming capable at such time of being declared, due and payable does not exist. Accordingly, an Event of Default did not occur under the Swap Agreement, Citibank was not entitled to declare such an Event of Default and USI is not obligated to pay the Defaulted Amount set forth in the Demand Letter.

While USI will continue to cooperate with Citibank to resolve any differences related to the Swap Agreement, Citibank's actions in this regard already have significantly and adversely affected USI. USI reserves its rights with respect thereto. USI believes that Citibank should continue to honor its commitments under the Swap Agreement and hope that this letter lays the foundation for the resolution of any issues with respect thereto.

Of course, if you have any questions or would like to discuss this issue, please do not hesitate to contact me.

Very Truly Yours,



Sheldon L. Solow

SLS:krb

cc: Tim Gallagher

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NEW YORK CHICAGO LOS ANGELES WASHINGTON, D.C. WEST PALM BEACH FRANKFURT LONDON SHANGHAI

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